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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/533,515

05/02/2005

Gerald Eckert

DE02 0245 US

4545

65913

7590

08/21/2008

NXP, B.V.

NXP INTELLECTUAL PROPERTY DEPARTMENT

M/S41-SJ

1109 MCKAY DRIVE

SAN JOSE, CA 95131

EXAMINER

PATEL, NIRAV B

ART UNIT

PAPER NUMBER

2135

NOTIFICATION DATE

DELIVERY MODE

08/21/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/533,515	<b>Applicant(s)</b> ECKERT ET AL.	
	<b>Examiner</b> NIRAV PATEL	<b>Art Unit</b> 2135	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6,8,10 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4,10 and 16 is/are allowed.
- 6) ☐ Claim(s) 6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Applicant's amendment filed on May 19, 2008 has been entered. Claims 1, 3, 4, 6, 8, 10, 16 are pending. Claims 5, 9, 11-15 are canceled and claims 1, 6, 10 are amended by the applicant. Claim 16 is newly added claim by the applicant.

### Claim Rejections - 35 USC § 101

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 6 and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 6 recites, "A device for detecting point correspondences between a first set of points and a second sets of points, comprising: a means for finding...; a means for finding....; a means for combining.....; a means for determining...; a means for sorting....; a means for creating....; a means for determining....". The claimed device direct to software modules [**specification page 5, lines 11-12 "The means 7 to 18 may also be implemented in the form of suitable software modules"**] (Absence of an explicit and deliberate definition in the specification that the means for must be implemented in hardware or a combination of hardware/software) which do not show the physical transformation. Therefore, the claimed "device" would amount to computer

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programs, a type of functional descriptive material, per se. As such, the claimed device must include the hardware necessary to realize any of the functionality of the claimed modules and produce a useful, concrete and tangible result. Absent recitation of such hardware as part of the claimed system, it is considered non-statutory.

Claim 8 depend on claim 6, therefore they are rejected with the same rationale applied against claim 6 above.

### **Response to Amendment**

3. Applicant's amendment filed on May 19, 2008 has been fully considered and entered. Claims 1, 10 have been modified to correct the 35 U.S.C. 101 issue. The newly amended claims 1 and 10 overcome such deficiency. However, upon further consideration, Claim 6 contains the non-statutory subject matter and therefore, it is rejected under the 35 U.S.C. 101. See rejection above.

### **Allowable Subject Matter**

4. Claims 1, 3, 4, 10, 16 are allowed.

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIRAV PATEL whose telephone number is (571)272-5936. The examiner can normally be reached on 8 am - 4:30 pm (M-F).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on 571-272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**NBP**  
**8/15/08**  
**/KimYen Vu/**  
**Supervisory Patent Examiner, Art Unit 2135**